IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

MISCELLANEOUS PETITION NO.27 OF 2004

IN

PETITION NO.657 OF 1982

Dr Behram Merwanji Sethna ...Petitioner

v/s

Mrs Siloo Dara Zaiwalla and anr. ...Respondents

Mr Prem S. Gidwani for Petitioner.

Mr S.C. Kotwal for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 6TH JULY 2006.

P.C. :-

1. Perused the order dated 10th March 2005 passed by this Court, appointing Commissioner. Perused the report of the Commissioner. The petitioner has relied on a judgment of the learned Single Judge of this Court in the case of Wadilal Chunilal v/s Murlidhar Girdharlal Shah, reported in 1970 BLR 723. The learned Single Judge has observed in relation to the procedure to be followed by the Commissioner and the procedure to be followed by the Court after receiving the Commissioner's report as under :-

> "In the result, I hold that no party, other than the executor or administrator who brings in the inventory and account has a right to appear before the Commissioner for taking accounts, even though he may be a party interested in the estate of the deceased and thee is, therefore, no question of any objection or surcharges being filed before the Commissioner, or of any report being made by the Commissioner on the inventory and account and the objections and surcharges filed before him. The proper procedure, according to me,

is that the Commissioner should examine the inventory and account, and if he is satisfied that a full and true inventory and a true account have been filed, he should certify accordingly. In the event, however, if the Commissioner being unable to grant such a certificate, the Court has the power under section 302 of the Succession Act to direct the executor or administrator to amend the inventory and / or account filed by him, or the parties may move the Court to take action against such executor or administrator under section 317(3) or (4) or under Explanation (e) to section 263, or by means of an administration suit for the costs of which provision is made by section 321 of the Succession Act. Nothing in this judgment should, however, be construed to mean that the Court should, in every case refer the inventory and account filed by executors or administrators to the Commissioner for taking accounts to examine and certify the same, or as laying down that the Court should ordinarily do so."

. Perusal of the report of the Commissioner shows that the respondent executrix has submitted

accounts and inventory substantially till December 2003 when the present petition was filed and the Commissioner appears to be satisfied with the inventory that has been submitted by the respondent executrix. In this view of the matter therefore, the petition is disposed off. According to the petitioner, he has further rights to agitate, it is open to the petitioner to adopt appropriate proceedings.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.